



**Service of Process
Transmittal**

02/07/2022

CT Log Number 541019950

TO: KIM LUNDY- EMAIL
Walmart Inc.
GLOBAL GOVERNANCE/CENTRAL INTAKE, 2914 SE I STREET MS#0200
BENTONVILLE, AR 72712-3148

RE: **Process Served in Texas**

FOR: Sam's West, Inc. (Domestic State: AR)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Re: CUELLAR MARTA // To: Sam's West, Inc.

DOCUMENT(S) SERVED: Citation, Attachment(s), Petition

COURT/AGENCY: 239th Judicial District Court of Brazoria County, TX
Case # 116424CV

NATURE OF ACTION: Personal Injury - Slip/Trip and Fall - 02/04/2020, Sam's Club located at 15800 South Freeway, Pearland, TX, 77584

ON WHOM PROCESS WAS SERVED: C T Corporation System, Dallas, TX

DATE AND HOUR OF SERVICE: By Process Server on 02/07/2022 at 03:17

JURISDICTION SERVED : Texas

APPEARANCE OR ANSWER DUE: By 10:00 a.m. on the Monday next following the expiration of 20 days after service

ATTORNEY(S) / SENDER(S): Laura S. Martinez
Martinez & Martinez, Attorneys at Law
2900 Woodridge Drive, Suite 202
Houston, TX 77087
713-645-7894

ACTION ITEMS: CT has retained the current log, Retain Date: 02/08/2022, Expected Purge Date:
02/13/2022

Image SOP

REGISTERED AGENT ADDRESS: C T Corporation System
1999 Bryan Street
Suite 900
Dallas, TX 75201

877-564-7529
MajorAccountTeam2@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.



PROCESS SERVER DELIVERY DETAILS

Date: Mon, Feb 7, 2022

Server Name: Drop Service

Entity Served	SAMS WEST INC
Case Number	116424CV
Jurisdiction	TX



2/01/22

**Cause No. 116424-CV
239th District Court**

D: **Sam's West, Inc. dba Sam's Club #4843** Defendant
By Serving its Registered Agent
C T Corporation System
1999 Bryan St., Suite 900
Dallas, Texas 75201-3136

NOTICE:

You have been sued. You may employ an attorney. If you or your Attorney do not file a written answer with the Clerk who issued this Citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this **Citation and Plaintiff's Original Petition** a Default Judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org. If filing Pro Se, said answer may be filed by mailing same to: Brazoria County District Clerk's office, 111 E. Locust, Suite 500, Angleton, TX 77515-4678 by bringing said answer in person to the aforementioned address.

The case is presently pending before the **239th District Court** of Brazoria County sitting in Angleton, Texas, and was filed on the **2nd day of February, 2022**. It bears Cause No. **116424-CV** and Styled:

Marta Cuellar
vs.
Sam's West, Inc. dba Sam's Club #4843, et al

The name and address of the Attorney filing this action (or Party, if Pro se) is, **Laura S. Martinez, Martinez & Martinez, Attorneys at Law, 2900 Woodridge Drive, Suite 202, Houston, TX 77087**.

The nature of the demands of said Plaintiff is shown by a true and correct copy of Plaintiff's Petition accompanying this Citation.

Issued under my hand and the seal of said Court, at Angleton, Texas, on the **3rd day of February, 2022**.

DONNA STARKEY, DISTRICT CLERK
Brazoria County, Texas

Digitally signed by Sunnye
 Wingo
 Date: 2022.02.03 13:13:36
 -06'00'

Deputy

Sunnye Wingo



Service Copy

Return of Service

Cause No. 116424-CV 239th District Court

MARTA CUJELLAR

VS.

SAM'S WEST, INC. DBA SAM'S CLUB #4843, ET AL

's West, Inc. dba Sam's Club #4843
 Serving its Registered Agent
 Corporation System
 9 Bryan St., Suite 900
 as, Texas 75201-3136

ne to hand on the _____ day of _____, 20____ at _____, o'clock _____.m., and executed in _____ County, Texas by delivering to each of the within named parties in person, a true copy of this Citation with date of delivery endorsed thereon, together with the accompanying copy of the Plaintiff's Original Petition at the following times places, to-wit:

ME DATE TIME PLACE, COURSE, AND DISTANCE FROM COURTHOUSE MILEAGE

not executed as to (NAME) _____

the cause or failure to execute this process is for the following reason: _____

diligence used in finding said (NAME) being: _____

ES:
 serving Citation and Copy
 age: _____ miles @ \$ _____ per mile

\$ _____ Officer
 _____ County, Texas
 \$ _____
 \$ _____
 Deputy/Authorized Person

COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT.

ccordance with Rule 107: The officer or authorized person who serves, or attempts to serve, a citation shall sign the return. The return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

y name is _____, my date of birth is _____, and my
 (First, Middle, Last)
 ress is _____
 (Street, City, State, Zip Code, Country)

ECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

cuted in _____ County, State of _____, on the _____ day of _____, 20____.

Declarant/Authorized Process Server

(Id No. and expiration of certification)

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA.
 116424-CV

NO. _____

MARTA CUELLAR	§ IN THE DISTRICT COURT
Plaintiff,	§
V.	§ JUDICIAL DISTRICT
SAM'S WEST, INC. DBA SAM'S CLUB	§
#4843; SAM'S EAST, INC. DBA SAM'S	§
CLUB #4843; WALMART INC.; SAM'S	§
REAL ESTATE BUSINESS TRUST	§
DBA DELAWARE SAM'S REAL	§
ESTATE BUSINESS TRUST; XAVIER	§
YULEE; AND JANE DOE AND JOHN	§
DOE, UNKNOWN EMPLOYEES OF	§
SAM'S WEST, INC. DBA SAM'S CLUB	§
#4843; SAM'S EAST, INC. DBA SAM'S	§
CLUB #4843; WALMART INC.; SAM'S	§
REAL ESTATE BUSINESS TRUST	§
DBA DELAWARE SAM'S REAL	§
ESTATE BUSINESS TRUST	§
Defendants.	§ OF BRAZORIA COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES MARTA CUELLAR, hereinafter called Plaintiff, complaining of and about SAM'S WEST, INC. DBA SAM'S CLUB #4843; SAM'S EAST, INC. DBA SAM'S CLUB #4843; WALMART INC.; SAM'S REAL ESTATE BUSINESS TRUST DBA DELAWARE SAM'S REAL ESTATE BUSINESS TRUST, XAVIER YULEE and JANE DOE AND JOHN DOE, UNKNOWN EMPLOYEES OF SAM'S WEST, INC. DBA SAM'S CLUB #4843; SAM'S EAST, INC. DBA SAM'S CLUB #4843; WALMART INC.; SAM'S REAL ESTATE BUSINESS TRUST DBA DELAWARE SAM'S REAL ESTATE BUSINESS TRUST hereinafter called Defendants, and for cause of action would show unto the Court the following:

DISCOVERY CONTROL PLAN LEVEL

1. Pursuant to Rule 190.1 and 190.4 of the Texas Rules of Civil Procedure, Plaintiff file this petition under a Level 3 Discovery Control Plan.

PARTIES AND SERVICE

2. Plaintiff, MARTA CUELLAR, is an Individual who resides in Harris County, Texas.

3. The last three numbers of MARTA CUELLAR's driver's license number are 270.

The last three numbers of MARTA CUELLAR's social security number are 848.

4. Defendant SAM'S WEST, INC. DBA SAM'S CLUB #4843, is a foreign corporation registered to do business in Texas and may be served by serving its registered agent for service of process: C T CORPORATION SYSTEM, at 1999 BRYAN ST., SUITE 900, DALLAS, TEXAS 75201-3136, its registered office.

Plaintiff specifically invokes the right to institute this suit against whatever entity was conducting business using the assumed or common name of "SAM'S CLUB and/or SAM'S CLUB #4843" and/or SAM'S CLUB WAREHOUSE with regard to the events described in this Petition. Plaintiff expressly invokes her right under Rule 28 of the Texas Rules of Civil Procedure to have the true name of this party substituted at a later time upon the motion of the Court.

5. Defendant SAM'S EAST, INC. IDBA SAM'S CLUB #4843, is a foreign corporation, may be served pursuant to sections 5.201 and 5.255 of the Texas Business Organizations Code by serving the registered agent of the corporation, C T CORPORATION SYSTEM, at 1999 BRYAN ST., SUITE 900, DALLAS, TEXAS 75201-3136, its registered office.

Plaintiff specifically invokes the right to institute this suit against whatever entity was conducting business using the assumed or common name of "SAM'S CLUB and/or SAM'S CLUB #4843" and/or SAM'S CLUB WAREHOUSE with regard to the events described in this Petition. Plaintiff expressly invoke their right under Rule 28 of the Texas Rules of Civil Procedure to have the true name of this party substituted at a later time upon the motion or of the Court.

6. Defendant WALMART INC., is a foreign corporation, may be served pursuant to sections 5.201 and 5.255 of the Texas Business Organizations Code by serving the registered agent of the corporation, C T CORPORATION SYSTEM, at 1999 BRYAN ST., SUITE 900, DALLAS, TEXAS 75201-3136, its registered office.

7. Defendant SAM'S REAL ESTATE BUSINESS TRUST DBA DELAWARE SAM'S REAL ESTATE BUSINESS TRUST is a foreign corporation, may be served pursuant to sections 5.201 and 5.255 of the Texas Business Organizations Code by serving the registered agent of the corporation, C T CORPORATION SYSTEM, at 1999 BRYAN ST., SUITE 900, DALLAS, TEXAS 75201-3136, its registered office.

8. Defendant XAVIER YULEE was, at times material to this lawsuit, an employee of SAM'S WEST, INC. DBA SAM'S CLUB #4843/ and/or; SAM'S EAST, INC. DBA SAM'S CLUB #4843; and/or; WALMART INC.; and/or; SAM'S REAL ESTATE BUSINESS TRUST DBA DELAWARE SAM'S REAL ESTATE BUSINESS TRUST, and was assigned to manage the store in question in this lawsuit. Said Defendant may be served at his place of employment or wherever he may be found:

XAVIER YULEE, Manager
Sam's Club Store #4843
15800 South Freeway

Pearland, Texas 77584

9. There are other employees of SAM'S WEST, INC. DBA SAM'S CLUB #4843; and/or SAM'S EAST, INC. DBA SAM'S CLUB #4843; and/or WALMART INC.; and/or SAM'S REAL ESTATE BUSINESS TRUST DBA DELAWARE SAM'S REAL ESTATE BUSINESS TRUST, whose names are unknown to Plaintiff, who participated in the upkeep and inspection of the premises in question in this lawsuit. Plaintiff is unable to identify such persons without conducting discovery, but sues those unknown persons as JOHN DOE AND JANE DOE, UNKNOWN EMPLOYEES OF SAM'S WEST, INC. DBA SAM'S CLUB #4843; and/or, SAM'S EAST, INC. DBA SAM'S CLUB #4843; and/or; WALMART INC.; and/or; SAM'S REAL ESTATE BUSINESS TRUST DBA DELAWARE SAM'S REAL ESTATE BUSINESS TRUST. Plaintiff, upon further discovery, will diligently attempt to isolate the identities of said individuals and name them in the suit in question.

Service upon said Defendant(s) is not requested at this time.

JURISDICTION AND VENUE

10. The subject matter in controversy is within the jurisdictional limits of this court.

11. Plaintiff seeks:

a. monetary relief over \$250,000 but not more than \$1,000,000.

12. Venue is proper in Brazoria County, Texas pursuant to CPRC §15.002(a)(1) because it's the county in which all or substantial part of the events or omission giving rise to the claim occurred.

13. Furthermore, because Plaintiff has established proper venue against one defendant, the court also has venue of all the defendants in all claims or actions arising out of the same transaction, occurrence, or series of transactions or occurrences, thus venue is proper in

Brazoria County, Texas as to all defendants in this case. TEX. CIV. PRAC. & REM. CODE § 15.005.

FACTS:

14. At all times material hereto, Defendant(s) SAM'S WEST, INC. DBA SAM'S CLUB #4843, and/or SAM'S EAST, INC. DBA SAM'S CLUB #4843, and/or WALMART INC., and/or SAM'S REAL ESTATE BUSINESS TRUST DBA DELAWARE SAM'S REAL ESTATE BUSINESS TRUST, was/were the owner(s) and/or occupier(s) and/or operator(s) of a retail store known as Sam's Club, located at 15800 South Freeway, Pearland, Texas 77584; hereinafter referred to as "the Premises."

15. On or about February 4, 2020, Plaintiff was an invitee on the Premises and was shopping for a bag of soil. As Plaintiff was placing the bag of soil into her shopping cart, she tripped over two bags of soil that were improperly placed on the ground. Ms. Cuellar fell in a violent manner, causing her left lower back and left glute to hit a pallet where other bags of soil were located. Because of the severity of her pain, Plaintiff was unable to get up.

16. During the time that Plaintiff was on the Premises, Plaintiff was seriously injured as a result of a dangerous condition in that the two bags of soil were on the ground and in her path.

17. Plaintiff's bodily injuries occurred as a direct result of a fall that was proximately caused by the dangerous condition described above, which Defendants knew or, in the exercise of ordinary care, should have known existed.

LIABILITY OF DEFENDANTS

18. At all times mentioned herein, Defendant(s) SAM'S WEST, INC. DBA SAM'S CLUB #4843; and/or SAM'S EAST, INC. DBA SAM'S CLUB #4843; and/or WALMART

INC.; and/or SAM'S REAL ESTATE BUSINESS TRUST DBA DELAWARE SAM'S REAL ESTATE BUSINESS TRUST, owned the property in question, located at 15800 S. FREEWAY, PEARLAND, TEXAS 77584.

19. At all times mentioned herein, Defendant(s) SAM'S WEST, INC. DBA SAM'S CLUB #4843; and/or SAM'S EAST, INC. DBA SAM'S CLUB #4843; and/or WALMART INC.; and/or SAM'S REAL ESTATE BUSINESS TRUST DBA DELAWARE SAM'S REAL ESTATE BUSINESS TRUST, had such control over the premises in question that said Defendant(s) owed certain duties to Plaintiff, the breach of which proximately caused the injuries set forth herein.

20. Defendant(s) SAM'S WEST, INC. DBA SAM'S CLUB #4843; and/or SAM'S EAST, INC. DBA SAM'S CLUB #4843; and/or WALMART INC.; and/or SAM'S REAL ESTATE BUSINESS TRUST DBA DELAWARE SAM'S REAL ESTATE BUSINESS TRUST, Defendant's/Defendants' agents, servants, and employees negligently permitted the floor to be unsafe by having the obstructing bags of soil on the ground, and negligently or willfully allowed such condition to continue and negligently or willfully failed to warn Plaintiff of the condition of the floor. This condition existed despite the fact that Defendant(s) and/or Defendant's/Defendants' agents knew or should have known of the existence of the aforementioned condition and that there was likelihood of a person being injured as occurred to Plaintiff.

21. Defendant XAVIER YULEE was the manager of the store in question when the incident complained of occurred. Such Defendant was responsible for ensuring that the condition of the store was not unreasonably dangerous for invitees of the premises, and the management of employees and agents of Defendant(s) SAM'S WEST, INC. DBA SAM'S

CLUB #4843; SAM'S EAST, INC. DBA SAM'S CLUB #4843; WALMART INC.; SAM'S REAL ESTATE BUSINESS TRUST DBA DELAWARE SAM'S REAL ESTATE BUSINESS TRUST.

22. Additionally, the store in question was managed, operated, or staffed by Defendant JANE DOE and/or JOHN DOE, UNKNOWN EMPLOYEES OF SAM'S WEST, INC. DBA SAM'S CLUB #4843; and/or SAM'S EAST, INC. DBA SAM'S CLUB #4843; and/or WALMART INC.; and/or SAM'S REAL ESTATE BUSINESS TRUST DBA DELAWARE SAM'S REAL ESTATE BUSINESS TRUST. Such Defendant(s) were witnesses to the incident complained of, and were responsible for ensuring that the condition of the store was not unreasonably dangerous for invitees of the premises.

23. Furthermore, Plaintiff would show the court that the condition of the floor had continued for such period that had Defendant SAM'S WEST, INC. DBA SAM'S CLUB #4843; and/or SAM'S EAST, INC. DBA SAM'S CLUB #4843; and/or WALMART INC.; and/or SAM'S REAL ESTATE BUSINESS TRUST DBA DELAWARE SAM'S REAL ESTATE BUSINESS TRUST, and/or Defendant's/Defendants' agents/employees exercised ordinary care in the maintenance of the floor surface area, the dangerous condition would have been noticed and corrected by such individual(s).

24. At all times pertinent herein, Defendants and any of Defendant's/Defendants' agents, who were acting in the scope of their employment, were guilty of negligent conduct toward the Plaintiff in:

- A. Failing to properly inspect and maintain the flooring area in question to discover the dangerous condition;
- B. Failing to maintain the floor in a reasonably safe condition;
- C. Failing to give adequate and understandable warnings to Plaintiff of the unsafe condition of the flooring area;

- D. Failing to give warnings to Plaintiff of the unsafe condition;
- E. Failing to remove the bags of soil causing the fall;
- F. Failing to provide adequate lighting of the area in question; and
- G. Failing to discover and remove the bags of soil within a reasonable time.

25. Each and every, all and singular of the foregoing acts and omissions, on the part of Defendant(s) and/or its/their agents, servants and/or employees, taken separately and/or collectively, constitute a direct and proximate cause of the injuries and damages set forth below.

26. Defendant(s) is/are vicariously liable under the doctrine of *respondent superior* for the acts or omissions of its/their agents, servants and/or employees.

EXEMPLARY DAMAGES

27. Defendants' acts or omissions described above, when viewed from the standpoint of Defendants' at the time of the act or omission, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiff and others. Defendants had actual, subjective awareness of the risk involved in the above described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff and others.

28. Based on the facts stated herein, Plaintiff requests exemplary damages be awarded to Plaintiff from Defendants.

DAMAGES FOR PLAINTIFF, MARTA CUELLAR

29. As a direct and proximate result of the negligence of the Defendant(s) described herein, Plaintiff, MARTA CUELLAR was caused to suffer injuries to her lower back, neck and left hip.

30. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff suffered severe injuries. Plaintiff has incurred the following damages:

- A. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff for the necessary care and treatment of the injuries resulting from the incident complained of herein;
- B. Reasonable and necessary medical care and expenses which will, in all reasonable probability, be incurred in the future;
- C. Physical pain and suffering in the past;
- D. Mental anguish in the past;
- E. Physical pain and suffering in the future;
- F. Mental anguish in the future;
- G. Physical impairment in the past;
- H. Physical impairment which, in all reasonable probability, will be suffered in the future;

31. By reason of the above, Plaintiff, MARTA CUELLAR has suffered losses and damages in a sum within the jurisdictional limits of the Court and for which this lawsuit is brought.

32. Defendant(s) SAM'S WEST, INC. DBA SAM'S CLUB #4843; and/or SAM'S EAST, INC. DBA SAM'S CLUB #4843; and/or WALMART INC.; and/or SAM'S REAL STATE BUSINESS TRUST DBA DELAWARE SAM'S REAL ESTATE BUSINESS TRUST, are engaged in a joint enterprise, joint venture, and/or partnership. As such, the companies are agents of each other and are jointly and severally liable for Plaintiff's injuries and damages.

33. Plaintiff sues the Defendants herein, jointly and severally, for the full amount of Plaintiff's damages.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, MARTA CUELLAR, respectfully prays that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendants for damages in an amount within the jurisdictional limits of the Court; exemplary damages, excluding interest, and as allowed by Sec. 41.008, Chapter 41, Texas Civil Practice and Remedies Code; together with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

MARTINEZ & MARTINEZ
ATTORNEYS AT LAW

By: /s/ LAURA S. MARTINEZ
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